IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Mastan @ Mohan Vs. State of Rajasthan
(S.B. CRIMINAL APPEAL NO.592/2003)

S. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 24-3-2003 in Sessions Case No.130/2002 (4/2002) passed by Sh. Bhagya Mal Sharma, Additional Sessions Judge (Fast Track) Beawar.

Date of Judgment: February 21, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. Anurag Sharma, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT:

Mastan @ Mohan, the appellant herein, was put to trial before the learned Additional Sessions Judge (Fast Track) Beawar, who vide judgment dated March 24, 2003 convicted the appellant under section 376 IPC and sentenced him to suffer rigorous imprisonment for ten years and fine of Rs.1000/-, in default to further suffer simple imprisonment for six months. Against this judgment that the appellant has preferred the instant appeal.

2. I have learned counsel for the appellant as well as learned Public Prosecutor and scanned the material on record.

3. As per Radiology report the age of the prosecutrix on the date of incident was about 16 years, whereas the appellant was of 19 years of age.

It appears from the record that the FIR was lodged after the delay of six days. As per Medical Examination Report of prosecutrix (Ex.P-12) no injury was found on her genitals. It was stated in the report that the prosecutrix was found habitual of intercourse. No opinion in regard to rape was given, however Vaginal Swab was collected and sent for examination but as per FSL report semen was not detected in Vaginal Swab.

4. It is contended by learned counsel that the appellant was arrested on December 11, 2001 and he has been in custody continuously for a period of more than 5 years, therefore, in the facts and circumstances of the case the imprisonment awarded to appellant may be reduced. Reliance is placed on Raj Kumar Vs. State of Bihar (2006)9 SCC 589 and Ravinder Vs. State of MP (2006)9 SCC 590.

5. In Raj Kumar Vs. State of Bihar (supra) the Apex court considered the delay of three days in lodging the FIR as well as the medical report of the victim and reduced the sentence from seven years to three and half years. Whereas in Revinder Vs. State of MP (supra) the Apex Court reduced the sentence from seven years to four years.

6. In the case on hand, as already noticed that the FIR was lodged after a delay of six days and the prosecutrix who was habitual of sexual intercourse did not sustain any injury on her genital parts. No semen was found in vaginal swab. It also appears that the prosecutrix and appellant both were teenagers on the date of incident. Therefore, in the peculiar facts and circumstances, I am of the view that ends of justice would be met in reducing the sentence.

7. For these reasons, I allow the appeal in part and while upholding the conviction of appellant under section 376 IPC I sentence him to the period already undergone by him in confinement. The appellant Mastan @ Mohan, who is in jail, shall be set at liberty forthwith, if not required to be detained in any other case.

(Shiv Kumar Sharma)J.

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